# The Solicitors' Journal

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## CURRENT TOPICS

### "Goodwill" Advertising

APROPOS our recent comments on the growing practice of goodwill advertising, it is observed that the Rochdale County Coroner, Mr. A. S. COUPE, recently holding an inquest upon a man who had been found drowned in a canal, remarked: "Many people seem frightened to death of going to a solicitor or an accountant. They are just as necessary as doctors or dentists or opticians, but there is an impression that their fees are exorbitant. That is not so . . . I am not intending this as a general advertisement. It is just an observation on something which might never have happened to Mr. ——— if he had availed himself of these services." Mr. ——— had received an inheritance from America and the Inland Revenue had made inquiries. He had, said a son, been to see them "but they disbelieved everything he said and asked him more and more questions." Perhaps he was unaccustomed to seeking professional advice and he seems to have feared it would make his position worse. It is sad to think that he may well have had no tax liability and that all that stood between him and this knowledge was the price of a few guineas' worth of professional services. All solicitors know that a large proportion of the population still fear to consult them—though they will cheerfully buy themselves television sets and second-hand motor cars. Which of us has not met the new client who says quite unnecessarily, "Of course, I cannot afford hundreds of pounds in legal fees?" The old jokes about "Six and eightpence for answering the door bell" die a hard death.

### Part of a Larger Transaction or Series of Transactions

A STATEMENT of current Stamp Office practice in the September issue of the *Law Society's Gazette* indicates that where a purchaser buys several lots of property from the same vendor at an auction, and each lot is bid for and bought separately, the subsequent preparation, for convenience only, of one memorandum of the contracts is not regarded by the Stamp Office as constituting grounds for objection to the inclusion of a certificate of value, where appropriate, if separate conveyances are taken. If, however, e.g., the bids were dependent on the purchaser obtaining a good title to every lot, the preparation of separate memoranda would not prevent the transactions together from forming a series. Again, if a purchaser takes separate conveyances of properties included in one lot, he cannot plead that the conveyances do not form part of a larger transaction or series of transactions. It is pointed out that a sale by private treaty is on a different footing (*A.-G.* v. *Cohen* [1936] 2 K.B. 246; [1937] 1 K.B. 478). Where there are several conveyances negotiated between parties privately at about the same time, then, whether the properties are included in a single contract or whether there are several contracts, there would be the strongest presumption that the several conveyances must each form part of a larger transaction or series of transactions. The new edition of the *Law Society's Digest*, which is expected by the end of the year, is accordingly to omit opinions 1920 and 1955 of the 1937 edition.

## *CONTENTS*

### Agricultural Land Tribunals

A STATEMENT from the Ministry of Agriculture on 31st August, 1954, refers to new statutory instruments under which agricultural land tribunals have been empowered, at the request of any party concerned in a reference to them, to refer questions of law to the High Court, and they must do so if the court so direct. The new statutory instruments bring into force ss. 4 and 6 of the Agriculture (Miscellaneous Provisions) Act, 1954, and re-enact, with amendments, the Agriculture (Procedure of Agricultural Land Tribunals) Orders, 1948. Section 4 of the Act comes into force on 29th September and s. 6 came into force on 1st September, 1954. Section 6 directs that any question of law arising during proceedings before an agricultural land tribunal may, at the request of any party to the proceedings, be referred by the tribunal to the High Court for decision, whether before or after the tribunal have given their decision in the proceedings.

### Solicitors and Banks

IT is announced in the September issue of the *Law Society's Gazette* that representatives of the Council of The Law Society are in future to meet representatives of the Committee of London Clearing Bankers to consider matters of common interest. The Committee have asked the Council to make known to the profession a few points of banking practice which may not be common knowledge. These are: (1) Bank officials are not allowed to prepare wills or codicils for customers. (2) Bank managers must see that the printed conditions on which the bank is willing to act are known to customers who wish to appoint their banks as executor or trustee. (3) The manager is prepared to recommend a solicitor for the preparation of a will or codicil, and advise that a solicitor be employed for this purpose. (4) A bank trustee department or company will always welcome a preliminary discussion with the solicitor who is preparing the will, particularly where a private company, business or farm is involved. (5) A bank is usually willing to act jointly with a co-executor or a co-trustee. (6) A bank ordinarily employs the solicitor nominated in the will, or if none is nominated, the solicitor who usually acted for the testator.

### Housing Repairs and Rents Act, 1954: Slum Clearance

LOCAL authorities in England and Wales have been asked in circular No. 55/54 issued by the Minister of Housing and Local Government on 28th August, 1954, to send their slum clearance proposals to him by 30th August next year for his approval. He says that in examining proposals he "will require to be satisfied that these provide for the solution of the slum problem as quickly as the council's commitments and resources, and the supplies of building labour and materials, permit." They are asked to draw up programmes of action for the next five years. The circular deals with the Housing Repairs and Rents Act, 1954, which came into operation on 30th August, and refers to amendments made to the conditions attached to making grants for improving houses and for their conversion into flats. Among other things the new Act removes the upper limit—previously £800—of the cost of improvements and conversions eligible for grant; enables local authorities to pay grants for the improvement or conversion of houses which will afterwards last more than fifteen years in place of the previous minimum of thirty years; and amends the provisions for the fixing of rent so as to enable a council to settle a figure which represents the value of the dwelling under the conditions of to-day, and does justice to both owner and tenant. "These amendments," says the circular, "are designed to promote the modernisation of privately owned structurally sound existing houses, many of which will, unless provided with modern amenities, rapidly deteriorate into slums and put heavier burdens on public funds." The Minister again urges councils to do everything they can to encourage private owners to apply for these grants. In particular, he hopes that they will authorise their officers to tell applicants whether a grant is likely to be made, and, if it is, what rent the council are likely to fix, on receipt of outline proposals and before applicants are put to the expense of providing detailed plans and specifications.

### Rents for Lettings by Housing Associations and Housing Trusts

ANOTHER circular issued by the Ministry of Housing and Local Government, this time to housing authorities (circular No. 58/54) refers to the effect of s. 33 of the Housing Repairs and Rents Act, 1954, in excluding from the Rent Acts lettings by housing associations and housing trusts, and in enabling local authorities and housing associations to negotiate alterations in maximum aggregate rentals arranged in respect of houses built by such associations under s. 29 of the Housing Act, 1930, s. 27 of the Housing Act, 1935, or s. 94 of the Housing Act, 1936. Since 1939, such maximum aggregate rentals have been frozen by the Rent Acts, but with the passing of s. 33 of the 1954 Act the circular states that the Minister is prepared to receive applications for approval to variations forthwith. It must be noted, however, that s. 33 only applies to existing lettings from 1st March, 1955. The circular points out that the rents of houses erected by housing associations under the Housing Acts of 1919, 1923 and 1924 are not regulated by formal agreements between associations and local authorities but are subject to statutory restrictions. Proposals from housing associations affecting the rents of these houses should therefore, it is stated, be sent to the Minister for consideration, accompanied by any comments the local authority may desire to make on them.

### Compulsory Purchase Orders and Statutory Tenants

IN January this year (*ante*, p. 50) we referred to *Brown and Ford* v. *Minister of Housing and Local Government and Wandsworth Borough Council* [1953] 1 W.L.R. 1370; 97 SOL. J. 797, and the difficulties it had created for local authorities exercising compulsory purchase powers by reason of the decision that "occupier (except tenants for a month or any period less than a month)" in the Acquisition of Land (Authorisation Procedure) Act, 1946, Sched. I, para. 3 (1) (*b*), included a statutory tenant. In circular No. 1/54 addressed to local authorities, the Ministry of Housing and Local Government intimated that an amendment of the law would be sought, but that in the meantime the appropriate notices would have to be served on statutory tenants by local authorities before submitting compulsory purchase orders for confirmation. The necessary amendment has now been effected by s. 50 (1) of the Housing Repairs and Rents Act, 1954, under which a statutory tenant is to be deemed a tenant for a period of less than one month for the purposes of para. 3 (1) (*b*). Ministry of Housing and Local Government Circular No. 60/54, dated 27th August, 1954, draws the attention of local authorities to this amendment, which became operative on 30th August.

### Estate Duty and Deaths on Active Service

A PROPOSED new instruction by the Army Council is referred to in a letter to Mr. G. NABARRO, M.P., from the CHANCELLOR OF THE EXCHEQUER. The instruction will set out the legal position affecting the estates of National Servicemen. It will state that the exemption from estate duty applies to the estates of those killed, etc., while (*a*) serving with a force engaged in operations against an enemy or engaged in a foreign country for the protection of life and property or in military occupation of a foreign country (*de facto* active service under Army Act, s. 190); or (*b*) serving with a force which is by declaration deemed to be on active service by reason of the imminence or recent existence of active service ("declared" active service under Army Act, s. 189); or (*c*) on other service which, in the opinion of the Treasury, involves the same risks as service of a warlike nature.

### Share Option Schemes and Income Tax

IT used to be the official view of the Board of Inland Revenue that liability to income tax in respect of the value of options granted to employees or directors under share option schemes was determined by reference to the date when the option was granted. This view has recently been put forward in articles in the Press, but the Board now state, according to the September issue of the *Law Society's Gazette*, that they are advised that, as a general rule, the liability to income tax should be determined by reference to the date on which the option was exercised, and not the date on which it was granted. Particular option schemes, it is stated, may have special features which would affect the application of this general principle.

### Magistrates' Clerks and Superannuation

MAGISTRATES' courts committees are in future to be supplied with copies of all statutory instruments made under the Local Government Superannuation Act, 1953, since they will apply to justices' clerks and assistants as to local government employees, subject to the modifications in the Justices' Clerks and Assistants (Superannuation) Regulations, 1954 (S.I. 1954 No. 1050). The first to be sent are the Local Government Superannuation (Surrender of Superannuation Allowance) Rules, 1954, which came into operation on 6th July, 1954, effecting a number of minor changes among which are: (1) The minimum pension which may be provided by a surrender is £26 per annum. (2) A notice of surrender given in respect of a spouse is to be dealt with as one in respect of a dependant where the administering authority is not satisfied as to proof of marriage.

### Crime in London

SIR JOHN NOTT-BOWER, the Metropolitan Police Commissioner, in his report for 1953, published on 31st August, 1954, confirms the indications of a falling off in serious crime in the recently published Criminal Statistics for England and Wales (*ante*, p. 597). He states that in 1953 the number of indictable offences in London was 99,454, which was 9 per cent. below that of 1952 and the lowest since the war. Returns for the first months of 1954 showed that the downward trend in indictable offences was continuing. In 1953, as in 1952, there was a general decrease in arrests of persons under twenty-one. The 42,203 road casualties, of whom 587 died, represented an increase of more than 6 per cent. compared with the 1952 figures, although the total was still well below the level of the years before the war.

### Service Law Amendment

THE Report of the Spens Committee on the Army Act and the Air Force Act (H.M. Stationery Office, price £1 1s.), published on 31st August, 1954, contains the drafts of new Bills to take the place of the Army Act and the Air Force Act. The committee recommend that each new Act should expire twelve months after the date on which it becomes effective, but should be renewable annually for four further periods of twelve months by resolutions of both Houses of Parliament. In the fifth year new Bills would have to be introduced. The committee propose the repeal of a provision that while a creditor for a sum not exceeding £30 may obtain execution against a soldier's property other than his pay, arms or equipment, a soldier cannot be compelled to appear before a court, nor can he be committed to prison. They propose to replace this provision by one which simply provides that no judgment against an officer or soldier may be enforced by the levying of execution on any arms, ammunition, equipment, instruments or clothing used by him for military purposes. The committee recommend the retention of the existing arrangements for certificates and returns rendered to the military authorities by the police or the magistrates in respect of deserters or absentees; but they suggest a new form of certificate which would ensure the exclusion of any detail that might be prejudicial to the man.

### Solicitors' War Memorial Fund

AN article in the September issue of the *Law Society's Gazette* gives details of how the two-fold purpose of the Solicitors' War Memorial Fund of erecting a visible memorial and assisting disabled solicitors and articled clerks and their dependants and the families of the fallen has been fulfilled. The article describes the visible memorial in The Law Society's Hall and the Book of Memory, which contains the names and brief particulars of 608 solicitors and articled clerks who lost their lives in the late war, as well as those of 1,124 solicitors and articled clerks who lost their lives in the 1914–18 war. Photographs of the memorial and the Book of Memory with a facsimile of the appropriate page have been presented to the next of kin, and the memorial and the Book of Memory, a page of which is turned every day, may be seen by relatives and friends during the hours when the Society's Hall is open. Help has been given out of the Fund in sixteen cases. No new applications can be accepted, the remaining assets being only sufficient to meet commitments in respect of the existing beneficiaries.

### Tidiness in the Civil Service

SOLICITORS and civil servants are alike in that they must be tidy to the extent of keeping everything in files. Within that narrow limit, great variations in degrees of tidiness are observable in both professions. Outside the limit, the variations are greater. So far as the civil service is concerned, a recent official memorandum quoted in the September issue of the *Whitley Bulletin*, the organ of the civil service National Whitley Council (staff side), shows that civil servants may be errant human beings all the time and tidy civil servants only when they remember. Personal gear, shopping baskets, etc., should, it is said, be as far as possible kept out of sight. Members of the staff who buy flowers should be encouraged in their efforts, and "receptacles for the disposal of dead flowers should be considered." Teacups should be put out of sight and papers and articles should not be left on the floor, window ledges, cupboard tops or mantelpieces, and notices should not be pasted or pinned to the walls. Do these exhortations apply with the same force in other offices—solicitors' offices for example?

# IS GILBERT HARDING RIGHT?

EARLIER this year there was a certain amount of stir at the corner of Chancery Lane and Carey Street because Mr. Gilbert Harding claimed in a Sunday newspaper that the professional services rendered by solicitors in conveyancing matters "achieve absolutely nothing except to put some nice easy money into the pockets of a few professional folk." The *Law Society's Gazette* for January, 1954 (p. 15), contains full information about this shocking affair. The *Gazette* for February printed a further extract from Mr. Harding's writings in the course of which he observed: "All I said was that it costs an awful lot in legal fees to buy or sell a house. Doesn't it?" But the corner of Chancery Lane and Carey Street (bounded on the west for the purposes of identification only, but not of limitation or enlargement, by Bell Yard) was not to be left in peace. In May last a writer in the *Daily Mirror* suggested that "there should be no need to go to a private solicitor to purchase a house . . . The whole business should be done by the local council's housing department as a service to ratepayers." For more information about this proposal (which caused earth tremors in several country churchyards as deceased solicitors turned in their graves) reference can be made to the *Gazette* for July, 1954. Who can tell what the future will bring?

It is easy to shelter behind the Lord Chancellor, the Statutory Committee and Parliament, particularly as only a few months have passed since we were awarded our last rise although other demands were turned down. The unpleasant fact does remain that, to quote Mr. Harding, "it costs an awful lot in legal fees to buy or sell a house." Let us remind ourselves of the gross cost of moving, leaving aside paying for the actual removal, altering carpets and curtains and all the other miscellaneous expenses. Let us consider a man of modest means, living in a modest house which he sells for £2,500 in order to take up an appointment in a different part of the country. Let us assume that he pays £2,500 for his new house and, to look at the worst, that the titles of both houses are unregistered. Agent's commission will cost him £70, the scale fees on both transactions £90, stamp duty £25 and incidentals such as searches perhaps another £2. If mortgages have to be paid off and raised (which happens more often than not), he will be a very lucky man to escape with a total bill of less than £200. That, in Mr. Harding's elegant phrase, is "an awful lot."

Now, it would be entertaining to devote the rest of this article to the finances of house agents, but the temptation must be resisted. There is, however, one easy victim, and that is the stamp duty. Surely a duty of 1 per cent. (unless the price is less than £500 which, to-day, in practice, applies only to vacant land) rising to 2 per cent. is a wholly unjustifiable tax on that desirable form of thrift known as owner-occupation. At a time when the purchase tax on necessities has been almost entirely swept away, there is no reason why the country should continue to tolerate this impost. The legal profession should use all its well-known powers of persuasion, and enlist the help of public figures such as Mr. Harding, in order to induce Parliament to cease allowing the Chancellor to raise money from hard-working people before they are permitted to own a house, money which he only fritters away in paying for operations for Belgians who are dissatisfied with their own doctors, or in maintaining in genteel poverty, in Kentish Town, inhabitants of several of our colonial possessions. Surely we can all unite on this, and it is more important to find points of agreement than points of difference.

Having refused to get involved in an argument with house agents, and having agreed that the stamp duty must go, we must face the fact that we have reduced our hypothetical client's bill by only £25 plus the stamp duties on his mortgage, if any. What can be done about the £90? If the titles of both properties were registered, he would be somewhat better off. On his sale he would pay only £30 and on his purchase £36 5s., a total saving of £23 15s. Land registration and the abolition of stamp duty would thus save such an owner-occupier nearly £50 each time he changed houses. In itself this would be worth having. It is true that even if we pressed forward with compulsory registration with all possible speed it would be many years before the full effects would be felt, but that does not seem to be a valid reason for refusing to begin. The longer the journey, the earlier should be the start. It is true that, since the 1925 legislation private conveyancing has become much simpler; what we are left with now is just dull, hard grind and the abstracting of conveyances, wills and mortgages for thirty years or more. Surely this is very unproductive work for typists, who are so difficult to obtain and who would be so much more profitably occupied on other things. There is much to be said for the view that it would be better to go the whole way to compulsory registration as quickly as possible and eliminate this tedious repetition. It is impossible to justify to the layman a system whereby the same title has to be examined time and time again, and it is not very easy, if we are honest, to justify it to ourselves. In the interests, therefore, of productivity and to eliminate waste, the profession should give all its support to the extension of compulsory registration; in particular, legislation should require the titles to all new estates now being developed to be registered, as indeed, many are being voluntarily, in order to avoid passing on countless more unregistered titles to those who follow after.

It is quite clear, however, that even registered conveyancing is expensive. It is a commonplace that in the last quarter of a century the work before contract has increased, while the work between contract and conveyance has decreased. This fact is one of the reasons why the scale fees for registered conveyancing were recently raised, but it may be that one important point was overlooked. The Secretary of The Law Society, in his reply to Mr. Harding, referred to such matters as planning requirements, the Rent Acts, sanitary notices and compulsory purchase. All these complications are with us, land registration or no. What is overlooked is that, by and large, these are headaches for the purchaser's solicitor and not for the vendor's. The latter, lucky fellow, will, if he is wise, have devised a form of questionnaire in which he has translated the preliminary inquiries into basic English; he will have obtained his client's answers which, with the assistance of "we do not know" and "the purchaser should search," in the majority of cases where private houses are changing hands, will enable him to deal with the curiosity of the purchaser's solicitor. As unregistered titles become simpler as a result of the 1925 legislation, this is the situation both in registered and unregistered conveyancing. There are, of course, a minority of cases where for some reason a vendor's solicitor has to do a great deal of work, but it is difficult to argue, so far as existing private houses are concerned, that the amount of work which the vendor's solicitor has to do at the present day is equal to that of the purchaser's solicitor. If any reduction in costs were to be made it would be more acceptable to let it fall on the vendor's solicitor.

On the other hand, it must be stressed that there is one class of persons who are not paying enough for their conveyancing, and they are the purchasers, and to a less extent, the vendors, of vacant building land. If an astute prospective owner-occupier buys his land for, say, £400, and enters into a separate building contract, his legal costs and stamp duty are only a little in excess of £11. If the foolish fellow buys a completed house for an inclusive price of £3,000, the costs and stamp duty are £82 10s. or a little more. In both cases it is assumed that the titles are unregistered and no account is taken of mortgage expenses. Yet in both cases the amount of work is the same; in fact, if there is any difference, the volume of work is greater when the land is unoccupied. One even has to leave in the preliminary inquiry relating to agricultural holdings, the accidental inclusion of which in normal cases provides the occasion for so many witty retorts.

Most solicitors would resist, and rightly so, any suggestion that the scales should be abandoned and that they should be placed in the invidious position of charging their clients according to work done. The scales exempt the profession from sordid arguments, although they do not seem to discourage clients from suggesting that they are being charged too much. Yet, for the reasons given above, there is some ground for believing that the scales as they stand are too rigid and that insufficient stress has been laid on certain changed conditions. It is understood that the Minister of Housing and Local Government is considering how, if at all, the professions concerned with the buying and selling of houses can assist in bringing down the cost, and there may be at least something to be said for the suggestions contained in this article. To sum up, therefore, the stamp duty on house purchase should be abolished; no doubt this would give rise to complications in dealing with properties bought for investment, but it should not be beyond the wit of the Treasury to devise some definition. Secondly, the profession should whole-heartedly support and encourage the spread of compulsory registration; in particular, it should be possible to devise some means whereby solicitors acting on a purchase would act on behalf of the Land Registry as well as for the purchaser and possibly mortgagees as well. No doubt there would be serious staff problems at the registry, but if registration were seriously tackled on a long-term basis they would be easier to overcome. Thirdly, vendors' costs ought to be reduced in recognition of the fact that not so much work is involved on a sale as on a purchase, whether the title is registered or not. Fourthly, the scale costs on the sale and purchase of vacant building land ought to be increased to more realistic figures. Fifthly, as a first step to more registration, it should be made compulsory to register the titles of building estates before they are developed.

P. A. J.

# WIFE AS AGENT OF NECESSITY: CLAIM BY HER SOLICITOR FOR COSTS

THE recent decision of Stable, J., in *J. N. Nabarro & Sons* v. *Kennedy* [1954] 3 W.L.R. 296 (*ante*, p. 524), which has already been the subject of discussion in these pages (see *ante*, p. 533), is of importance in laying it down that an action will lie in law by the solicitor of a wife against the husband to recover the costs incurred by the solicitor in opposing on behalf of the wife an application by the husband under s. 17 of the Married Women's Property Act, 1882. It is, therefore, important to determine the extent of its application and of the obligation which it now imposes upon a husband to provide for the payment to the solicitor appearing for the wife of his costs of such proceedings. It is proposed in this article to consider solely the nature of this right of the wife's solicitor and the extent to which it operates as laid down in this decision.

Although Stable, J., did not fully accept the definition of the right of the wife in the circumstances as being that of an agent of necessity, since there was no sudden emergency which, as he stated, is a characteristic of an agency of necessity in its strictest sense, it is clear that he agreed that in law her right was the right which is so described with all the incidents attaching to it. And a description of it is well expressed thus by Greer, L.J., in *H. S. Wright and Webb* v. *Annandale* [1930] 2 K.B. 8: "This is an action by solicitors at common law and it is founded upon the law of agency. Unless the plaintiffs can make out that when they were retained, and throughout their retainer, the defendant's wife was the defendant's agent to pledge his credit, the action necessarily fails. It is an undoubted principle of law that where a wife is living apart from her husband and the husband wrongfully refuses to maintain her she has a right to pledge his credit for necessaries, and one of the matters always regarded as included in the term 'necessaries' is the power of the wife to instruct a solicitor to defend her from proceedings taken against her by her husband, to appear for her in proceedings taken by her against her husband, and also, it may be, to appear for her in proceedings which she has taken to protect her interests when living apart from her husband." And Scrutton, L.J., in *Durnford* v. *Baker* [1924] 2 K.B. 587 says, of such an action by a solicitor of a wife against her husband: "It is based on the ordinary common-law principle under which a wife living apart from her husband in certain circumstances can bind him by orders for necessaries . . ."

As pointed out, however, by Atkin, L.J., in this last case, the solicitor in his claim against the husband has no independent right—but in the words of Wright, J., in *Cale* v. *James* [1897] 1 Q.B. 418, at p. 420: ". . . the solicitor's rights are derivative." As a consequence of his rights against the husband being derivative only, the solicitor is subject to any defence in law which is open to a husband on a claim by his wife which is based upon her right to pledge his credit as an agent of necessity. It is only in a case where no such defence in law can be set up by a husband to his wife's claim as an agent of necessity that a claim by the wife's solicitor for the payment to him of his costs will lie against the husband. This right of a wife to pledge her husband's credit as an agent of necessity was fully examined in an article at 96 SOL. J. 674, and readers are referred to the cases there discussed; it is sufficient to note here that their effect is broadly to limit the right to cases where the parties are living apart through the husband's misconduct and the wife has remained chaste. Even if these conditions are satisfied, moreover, it will be necessary to show that at the time of contracting the wife had insufficient means of her own to meet the costs.

It was stated by Atkin, L.J., in *Durnford* v. *Baker* that he could see no sort of authority for holding that the common-law limitations of the wife's right do not apply to a solicitor as they do to tradesmen or other professional men. In that case the common-law limitation which it was held by the Court of Appeal applied so as to bar the wife's right to pledge her husband's credit for the costs of her divorce petition,

and, therefore, her solicitor's right to recover his costs from the husband, was the adultery of the wife, a fact not known either to the husband or to the solicitor. Furthermore, it was held in *H. S. Wright and Webb* v. *Annandale, supra*, that the same principle applies so as to bar the solicitor's right to his costs upon proof of the wife's adultery where the wife is defending proceedings brought against her by her husband. And it was held in this last case that it was not necessary, in order to bar the solicitor's claim, that the wife should be living in adultery and was thus continuously committing adultery, but that an isolated act of adultery on her part was sufficient to determine her right as an agent of necessity (see also *Arnold and Weaver* v. *Amari* [1928] 1 K.B. 584).

To summarise, then, it appears that in the numerous cases which come before the various courts having jurisdiction to hear disputes between a husband and wife under s. 17 of the Married Women's Property Act, 1882, the obligation of the husband at common law to be liable for the costs of the solicitor acting for his wife upon the ground that she was entitled to pledge his credit as an agent of necessity only arises in law where the following facts are established: (1) that the husband had driven his wife from the matrimonial home, or by his conduct had compelled her to leave it, or had deserted her and refused to provide a home for her; (2) that the wife at the time when she incurred the liability to the solicitor had an insufficiency of funds (bearing in mind her then means, no matter from what source her supply had come); (3) that the wife had remained chaste, and had not committed even one act of adultery. It would seem unlikely that in the majority of such cases all of the above three sets of facts would be established, with the consequent necessity to consider the husband's common-law liability for the costs of his wife's solicitor.

M. H. L.

***A Conveyancer's Diary***

# DISCHARGE OR MODIFICATION OF RESTRICTIVE COVENANTS—II

## ON APPLICATION TO CHANCERY DIVISION

For the middle article of these three the above heading "Discharge or Modification of Restrictive Covenants" is not strictly accurate, but the inaccuracy can be let pass because the motive behind all these applications, whether to the county court or the Chancery Division or the Lands Tribunal, is a desire on somebody's part to do something which is *prima facie* restricted by the terms of a lease or other instrument, and success in the application, to whatever tribunal it is made, means that he can go ahead. To the layman, at least, the difference between an order discharging a restriction and a declaration, binding on all concerned, that a restriction is ineffective to restrict what it purports to restrict, is nugatory.

Section 84 (2) of the Law of Property Act, 1925, provides that the court shall have power on the application of any person interested to declare (*a*) whether or not in any particular case any land is affected by a restriction imposed by an instrument, and (*b*) what, upon the true construction of any instrument purporting to impose a restriction, is the nature and extent of the restriction thereby imposed, and whether the same is enforceable and if so by whom. This subsection, like the whole of s. 84, applies to freehold land and to leasehold land (except land held on a mining lease) where the term created is a term of more than seventy years whereof fifty years have expired (s. 84 (12)). This is the law at present, but when the Landlord and Tenant Act, 1954, comes into force on 1st October, this provision will apply to leasehold land (as well, of course, as to freehold land) where the term created is one of more than forty years, twenty-five of which have expired. The reason for this qualification in the case of leasehold land is, presumably, a desire not to disturb a contract freely entered into by lessor and lessee in the recent past, and if it should be asked why contracts between lessor and lessee should be treated with a solicitude not extended to other obligations, entered into on occasions at least as solemn as that of the grant of a lease, logic can supply no answer. Moreover, as far as applications for a declaration are concerned, the ordinary jurisdiction of the High Court (in practice, the Chancery Division) to construe instruments overlaps s. 84 (2) (*b*), and if a case does not fall within this statutory jurisdiction because the requirements of s. 84 (12) (in the future, as amended) are not satisfied, it may be possible to obtain a declaration and achieve very much the same result under the ordinary jurisdiction in this respect of the Chancery Division. But in any case, it is in relation to freehold land or land held on very long terms that recourse to s. 84 is for the most part made.

To appreciate the utility of the court's power under s. 84 (2) it is necessary to bear in mind that a restriction affecting land is only effective if (*a*) the restriction is one of a kind which the law recognises as capable of binding the landowner in the circumstances, and (*b*) the burden of the covenant is either attached to the land or (sometimes) rests on the landowner as a personal obligation, and (*c*) the benefit of the restriction is in the person seeking to enforce the restriction. (Readers will, I hope, forgive the looseness of the language in which this proposition is phrased, but to elucidate it would require—indeed, has required—a whole book. I am concerned now to indicate possible ways of attack on a person seeking to enforce a restriction, and no more, and for this purpose this statement is, I hope, adequate.) If any one of these conditions is not satisfied, the restriction cannot be enforced against the landowner. Each of the three parts of this proposition, if disputed, contains a question of law, to be determined on a consideration of the relevant instruments, and of such facts only as are necessary to connect the relevant instruments with the parties to the application, e.g., the death of a covenantor or a covenantee and the devolution of the land consequent upon the death. The evidence required to support, or oppose, an application under s. 84 (2), if it can be procured at all, is therefore usually very inexpensive to collect and put into proper form.

The qualification as to the availability of the evidence is important. As I have said, it is possible to attack the restriction at any one of three points. First, it can be argued that the restriction is not of the kind which, in the circumstances, the law will enforce. A very common example of a covenant which is intrinsically defective within this principle is a positive covenant, which is enforceable only against the original covenantor. If, therefore, the original covenantor under a covenant, for example, to erect and ever afterwards maintain a fence is dead, the covenant is unenforceable. This

is a very simple example, and the court is not likely to be bothered, under s. 84 (2) or otherwise, with matters of this kind. But sometimes it is very difficult to say whether a covenant is one which the law will enforce or not. For instance, a covenant not to carry on a certain business on the land may be enforceable, otherwise than between the original parties thereto, or not according as it was taken to benefit other land or to protect the goodwill of the covenantee's business, a question which, with others, was discussed recently in *Newton Abbot Co-operative Society, Ltd.* v. *Williamson & Treadgold, Ltd.* [1952] Ch. 286. If this is the selected line of attack, the evidence which the applicant will need to file will consist merely of a statement of his title and an exhibited copy of the restriction. Alternatively, it can be argued, if the applicant is not the original covenantor, that the burden of the covenant was never annexed to the land in such a way as to cause it to devolve upon the applicant with the land. In such a case, also, the applicant's evidence will be very simple to marshal, for it will all be in his possession as part of his muniments of title to his land.

This leaves the last of the three possible lines of attack, which is also the most important, to consider. It is the most important because, on the whole, and with the exception of certain positive covenants, the kind of restriction which may lead to an application under s. 84 is a restriction which, in its nature, is enforceable provided that there is somebody who is entitled to its benefit and somebody else burdened with its burden. Similarly, if a conveyance (and *a fortiori* a lease) puts the purchaser under the burden of the restriction, the burden is usually imposed in such a way as to devolve with the land burdened therewith and bind it in the hands of its owner for the time being. In practice, therefore, a restriction can seldom be successfully resisted on the ground that it is of its nature unenforceable or that its burden has not descended on the owner of the land. But any practitioner who has had any considerable experience of this subject will tell you that a great many restrictions which appear to be binding on paper cannot in fact be enforced because, whatever the position was between the original parties, the original covenantee is no longer the owner of the land for the protection of which the covenant was taken and the benefit of the covenant has not devolved, with the land, to its present owner. In other words, the title to the benefit of the covenant is defective, and nobody can therefore sue on it.

I think that I can best illustrate the position by a quotation from the headnote to the report in the Law Reports of *Re Sunnyfield* [1932] 1 Ch. 79: "Where a conveyance of land never the subject of a building scheme contains restrictive covenants not expressed to be for the benefit of adjacent property or of a defined area and never passing by an assignment under which they can be enforced, the court, in the exercise of its discretion under s. 84 of the Law of Property Act, 1925 . . . may declare them no longer effective." To show that he is entitled to the benefit of a restrictive covenant and so is *prima facie* able to enforce it, a person who is not the original covenantee must, therefore, be able to show either (*a*) that the land which he seeks to protect was included in a properly constituted building scheme, or (*b*) that the benefit of the covenant was annexed to defined land, of which his land is part, or (*c*) that the benefit of the covenant has been properly assigned to him. These are formidable requirements. But if the case is not that of a person seeking to enforce a covenant on the strength of his own title, but of a person seeking (in effect) to destroy the covenant on the weakness of somebody else's title, then, however weak that title may be, the factor, or all the factors, which make it so are not within the knowledge of the attacker and cannot always easily be ascertained. If there is or purports to be a building scheme in the neighbourhood, it is true, there will often be evidence, and sometimes complete evidence, of both its existence and its extent in the muniments of title of the attacker, and if the scheme was not properly created an application under s. 84 (2) may have the effect of discharging the scheme; the choice of proper parties to the application presents no difficulties, and once parties have appeared gaps in the applicant's evidence may, if necessary, be filled by discovery. But in the other two cases referred to in *Re Sunnyfield*, there may be absolutely nothing in the muniments of title to the burdened land to indicate the existence of any defect in the title to the benefit of the covenant which would justify an application under s. 84 (2) on the ground that such a defect did in fact exist.

I hope I have said enough to show both the attractions and the difficulties of an application under this jurisdiction. The attractions are the simplicity and cheapness of the proceedings, the difficulties are evidential and, where they exist, are usually fatal. *Re Sunnyfield* should be carefully considered before an application of this kind is launched, but the reader should remember that in that case the vendors who imposed the restriction were a corporation (the Ecclesiastical Commissioners) and their carefully kept records were available as evidence of the conveyancing history of the locality, where they owned or had owned much land. An applicant under s. 84 (2) cannot usually expect such luck.

"A B C"

## *Landlord and Tenant Notebook*

# THE LANDLORD AND TENANT ACT, 1954—II

### SCOPE OF PART II

THE scope of Pt. II, which confers security of tenure on "business, professional and other tenants," is extremely wide and calls for careful consideration.

It is not only that demised premises "occupied for the purposes" specified (except in breach of a prohibition) are affected; it is what those purposes may include that makes the enactment almost revolutionary in character. For convenience, s. 23 (1) speaks of "occupied for the purposes of a business carried on by him [the tenant] or for those and other purposes"; but the next subsection says that "business" includes a trade, profession or employment and includes *any* activity carried on by a body of persons, whether corporate or unincorporate. The abolition of the distinction drawn by the Landlord and Tenant Act, 1927, s. 17 (1), disposes of such nice points as that discussed in *Stuchbery & Son* v. *General Accident, Fire and Life Assurance Corporation, Ltd.* [1949] 2 K.B. 256 (C.A.) (solicitor also insurance and building society agent). At first sight, the "any activity carried on by a body of persons," etc., suggests that a music circle or bridge club would qualify for security, but I suggest that this is a case in which the word "includes" is not meant to enlarge the meaning of the earlier words. "The word 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions

defined. It may be equivalent to 'mean and include,' and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions," runs a passage in Lord Watson's judgment in *Dilworth* v. *Stamps Commissioners, etc.* [1899] A.C. 99 (P.C.) which may be used to refute the suggestion. I will not, however, put it higher than that; for it might well be rejoined that, if such were to be the effect, the words of s. 23 (2) would have been ". . . includes any *such* activity . . ."

The earlier inclusion of an " employment," in juxtaposition to " a trade, profession . . ." is also rather bewildering. It is too early to venture an opinion on whether the word means " activity " or connotes a master-and-servant relationship. (The exclusion of certain tenancies granted by employers to their employees will be dealt with later in this article.)

The subsection excluding prohibited business from qualifying the tenant (subs. (4)) is carefully phrased. First, " where the tenant is carrying on a business, in all or any part of the property comprised . . . in breach of a prohibition (however expressed) of use for business purposes which subsists under the terms of the tenancy and extends to the whole of that property, this Part of this Act shall not apply to the tenancy unless the immediate landlord or his predecessor in title has consented to the breach or the immediate landlord has acquiesced therein." A few points are worth noting.

" However expressed ": *Williams* v. *Perry* [1924] 1 K.B. 936 might prove a useful illustration of a tenancy agreement which, though in that case it was residential user that was prohibited, had the intended effect though there was no formal covenant limiting user. Then, the distinction drawn between consent and acquiescence is of some importance, the latter not binding successors in title; but it should be borne in mind that there are authorities—such as *Gibson* v. *Doeg* (1857), 2 H. & N. 615, applied *inter alia* in *Hepworth* v. *Pickles* [1900] 1 Ch. 108—in which acquiescence in breach of restrictions on user " over a long course of years " has been held to warrant the inference of a licence; and that once that position has been achieved, it would not matter whether the person seeking to enforce the restriction were original grantor or not, consent being presumed. *Vigilantibus et non dormientibus iura subveniunt;* while I am not aware of any shorter sleep than a twenty years' one having effected extinguishment (*Rogers* v. *Great Northern Rly. Co.* (1889), 5 T.L.R. 264), no limit is prescribed; and active encouragement may bring about loss of rights as well as of remedies in a far shorter time (*Doe d. Sheppard* v. *Allen* (1810), 3 Taunt. 78: six years).

Further, s. 23 (4) expressly enacts: " the reference to a prohibition of use for business purposes does not include a prohibition of use for the purposes of a specified business, or of use for purposes of any but a specified business, but save as aforesaid includes a prohibition of use for the purposes of some one or more only of the classes of business specified in the definition of that expression in subs. (2) of this section."

The effect appears to be that when there is a breach of a covenant designed to protect amenities the Act gives the tenant no security of tenure; and this, I submit, may be the case whether all business is prohibited, or classes of business characterised by the use of some pejorative adjective, such as " obnoxious " or " offensive." The schoolmaster tenant who was held to have infringed a covenant against " any trade or business whatsoever " in *Doe d. Bish* v. *Keeling* (1813), 1 M. & S. 95, and the tenant whose tenant started a fish frying business, held to constitute (at Eastbourne) an offensive trade in *Devonshire* (*Duke of*) v. *Brookshaw* (1899), 81 L.T. 83, would not, I suggest, qualify, the real object being to prevent the lowering in the scale, etc., and future depreciation of the property (see *Doe d. Gaskell* v. *Spry* (1818), 1 B. & Ald. 617). But when the landlord has merely been anxious to protect other tenants or himself from competition, and courts are called upon to consider such questions as whether the business of a ladies' outfitter includes that of selling underclothing as well as hats and caps and handkerchiefs (*Stuart* v. *Diplock* (1889), 43 Ch. D. 343 (C.A.)), the subsection does not apply; and the defendant tenant in *Wartski* v. *Meaker* (1914), 110 L.T. 473, held to have infringed a covenant restricting his activities to those of a hosier or hatter or mercer " including the sale of fancy waistcoats and mackintoshes " when he sold overcoats which were not rainproof, would none the less qualify under the Landlord and Tenant Act, 1954, Pt. II.

Besides actual grantees, beneficiaries under trusts and companies doing business on premises let to other but associate companies may obtain protection (ss. 41, 42).

Exclusions from Pt. II are dealt with in s. 43. Subsection (1) specifies four kinds of tenancies: agricultural, mining, rent control protected tenancies, and certain licensed premises. These are much as one would expect, but it is noticeable that the rent controlled tenancies include those which would be protected but for the exclusion of dwelling-houses let at less than two-thirds of the rateable value (Increase of Rent, etc. (Restrictions) Act, 1920, s. 12 (7)).

The second subsection, with its proviso, calls for careful scrutiny. The main provision is that Pt. II is not to apply to " a tenancy granted by reason that the tenant was the holder of an office, appointment or employment *from the grantor* thereof and continuing only so long as the tenant holds the office, appointment or employment, or terminable by the grantor on the tenant's ceasing to hold it, or coming to an end at a time fixed by reference to the time at which the tenant ceases to hold it." The intention is plain, but is a tenancy terminable on the tenant's ceasing to hold his appointment, etc., if the same length of notice, expiring on the same date, will determine either? Then comes the important proviso: " This subsection shall not have effect in relation to a tenancy granted after the commencement of this Act unless the tenancy was granted by an instrument in writing which expressed the purpose for which the tenancy was granted." Draftsmen of precedents should set to work: the Act comes into operation on 1st October (s. 70 (2)); and they will have to consider what " reason " and " purpose " may have in common.

Lastly, s. 43 (3) may be said to contain the most interesting exclusion, providing, as it does, the only means by which a landlord letting any business premises may prevent his tenant from acquiring security-of-tenure rights. Part II is not to apply to a tenancy granted *for a term certain* not exceeding three months unless one of two conditions be fulfilled: the tenancy contains provision for renewing the term or for extending it beyond three months from its beginning; or the tenant has been in occupation for a period which, together with any period during which any predecessor in the carrying on of the business carried on was in occupation, exceeds six months. It should be noted that the first condition resolutive does not limit itself to cases in which the tenant has a right to renew or extend; and, of course, that it does not apply to periodic tenancies at all: the idea once prevalent, that a weekly tenancy was a series of tenancies created by weekly re-grants (based on *Sandford* v. *Clarke* (1888), 21 Q.B.D. 398) was held to be fallacious in *Bowen* v. *Anderson* [1894] 1 Q.B. 164. The effect of the two conditions is that a landlord, who wished to profit by the exclusion,

might do so by letting, say, a shop for a period of twelve weeks, promising nothing in the way of extension, but subsequently granting a further twelve weeks' term; after that, he would have to insist on the tenant vacating the premises for some short period before making any further grant. Whether this can ever be practicable remains to be seen. The possibility of a non-continuous tenancy may be worth investigating, *Smallwood* v. *Sheppards* [1895] 2 Q.B. 627 and *Ayers* v. *Hanson, Stanley & Prince* (1912), 56 SOL. J. 735, being referred to for inspiration.

R. B.

# HERE AND THERE

## THE UNPREDICTABLE GESTURE

THE more elaborate tools become, the more circumscribed are their purposes and functions. The fluorescent lamp illuminates. The motor car moves, when traffic conditions permit. The bean grading machine knows how many beans make five, but little else. The mechanical excavator moves mounds or mountains. But versatility is not their quality as it is of the more primitive tools, the intimate companions of man, their creator, the stick, the knife or, say, the spade with which he may dig holes or clean a chicken house or shift a pile of coke or fell an enemy, and on which he can afterwards lean for rest and contemplation. For man himself, there is no end to his versatility. Even the dullest human being can simultaneously climb a tree and whistle a tune and aim a stone at a cat and compose a letter to the inspector of taxes. That is why professional administrators would so much rather govern machines than men, if only it were possible. There is a certain limit to the variations of mechanical intractability: to those of human intractability there is none. Human actions sprout problems as a tree sprouts leaves. Take the case of Maurice Darlot, the sixty-five-year-old Paris beggar. In one simple action he raised problems of mendicancy, asportation, human gratitude, the economic price, the ethics of street trading, the profit motive and, no doubt, several more besides. As a beggar of twenty years' standing he had achieved moderate success and a modest competence, according to his standards, through the sympathetic kindness of the Parisian housewives. Then, suddenly, he sprang from modest obscurity to a crowded hour of glory when his former benefactresses discovered him one day behind a barrow in a street market selling luscious peaches of first grade quality for about a seventh of current prices. "Buy now," he urged them, "I may not be about to-morrow." Nor was he. He was in another place answering a charge of having removed the barrow and stolen the peaches, left unattended in the street while the owner was having a drink. But the odd thing about the case was that when Maurice abandoned the barrow he also left the takings for the owner. The magistrate, puzzled, asked him why he did it if he didn't want the money, to which he returned this explanation, surely disarming in its gratitude to the housewives who had so eagerly queued for his peaches: "I thought it was time I did them a good turn for all the kindnesses they have shown me." Tried by a jury of matrons, he would have been certain of a verdict of extenuating circumstances, at the worst. But the magistrate could find nothing in the criminal code about gratitude for past favours and sent him to prison for six months.

## THE VANISHING BORDER

ONE form of insanity, I believe, is an inability to distinguish between fact and fancy. One of these days with the cinema, the radio and television going the way they are, those who are interested in the matter will wake up to discover that half the population are in that sense insane. Formerly, one would say of a man in that condition that he lived in a world of his own, and it might well be, considering what the world common to the rest of humanity was like, that he was well advised to stay there. But in the age of the Welfare State and the mass man, when the border between fact and fancy is obliterated, it is no longer in a world of his own that a man lives, but in a prefabricated world manufactured for him by the B.B.C., so that not only are the Dales and the Archers as real to him as the panels of ladies and gentlemen who save him the trouble of playing his own parlour games for himself; they are as real to him as the people in the next house or the next street. It is interesting to see that the obliteration of the borderline works both ways and that to those responsible (if responsible is the right word) for the radio and television programmes the outside world has no more objective reality than the world which they themselves manufacture.

## A STORY TO THEM

THIS was rather remarkably apparent in the curious case of the witness in a criminal prosecution who was invited to participate in the television programme, "Guess My Story." As a story it was a picturesque enough story—the seventy-seven-year-old garage proprietor disturbed in the middle of the night, taking down his shotgun, letting fly in the direction of fleeing footsteps and lodging sixty-eight pellets in the leg of an intruder. The ingredients would go well enough into a detective thriller or a knock-about farce or a cautionary tale or a comedy of character or a "tear jerking" tale of social tragedy. But it just happens that it wasn't a story, that the characters were not figments of an author's imagination, that the incident was real, that the West Kent Quarter Sessions still had before them the task of determining from the recollection of the witnesses what really did happen and that on its determination depended liberty or imprisonment for three quite real and ascertainable human beings. Sir Reginald Sharpe, Q.C., the Deputy Chairman, seemed surprised that the British Broadcasting Corporation had not heard of the *sub judice* rule. It is hard not to share his surprise. He added that the matter would have to be looked into and that some action would have to be taken by the court. Later, a spokesman of the Corporation said that he had no comment to make. A silent spokesman is himself rather more like something out of a story than a solid figure of fact. No doubt he also lives in the blurred borderland of the B.B.C.

RICHARD ROE.

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It is announced by the Minister of State for Colonial Affairs that the Queen has been pleased to approve the appointment of Mr. D. H. SEMPER, Resident Magistrate, Jamaica, to be Puisne Judge in that territory.

Sir Winston Churchill, as Lord Warden of the Cinque Ports, has appointed Mr. N. L. C. MACASKIE, Q.C., to be Judge Official and Commissary of the Court of Admiralty of the Cinque Ports in succession to Mr. Ralph Sutton, Q.C., who has resigned.

# CORRESPONDENCE

*[The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL*]*

### Page 580: "An Ancient Family of Solicitors"

Sir,—My firm was started by Thomas Foster Notcutt in about the year 1777, possibly 1776. He took into partnership Stephen Abbott Notcutt, his nephew. The latter's son of like name, his grandson of like name, his great-grandson of like name and, finally, myself also of like name, his great-great-grandson, have since carried on the practice. Unfortunately, however, there was a break from 1925 when my great-uncle, G. J. Notcutt, died until I joined the firm in 1936. My father died when I was fifteen, in 1923.

I am thus the sixth generation. For there to be five successive generations of solicitors with the same name is rather confusing and recently I was dealing with some property in which there were deeds witnessed by S. A. N. II, S. A. N. III and S. A. N. IV at various dates. I have witnessed the most recent deed, so there are four S. A. Notcutt signatures among the deeds.

There is one firm in Ipswich for whom we have acted for 150 years now. Originally this client was an individual, followed by partnership and, finally, a limited company, but it is the same business whose main manufacture is what was started in 1803 (considerably improved nevertheless).

S. A. NOTCUTT.

Ipswich.

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### Battle of Britain Week (13th to 19th September)

Sir,—In these anxious times, when thoughts of atomic warfare are so much in our minds, it is timely to remember the Battle of Britain—which gave us deliverance from perils seeming at that time insuperable. This present year, which has seen the installation of Sir Winston Churchill as Knight of the Garter, brings the fourteenth anniversary of that proud victory with which he will be for ever identified. Our thoughts turn now to that battle and to the many subsequent air battles that meant so much in pain and suffering to the families and dependants of those who played their magnificent part in them.

May I appeal to your readers to-day to give practical thanks for our victories in 1940 and the years that followed. My plea is not only for the families and dependants of those who fell in that battle but also for all who are serving or have served in the R.A.F. or W.R.A.F., their families and dependants.

The Royal Air Force Benevolent Fund, of which I have the honour to be chairman, exists to help these people in time of distress. Last year alone the Fund aided 22,752 cases at a cost of £588,364. Nearly £5,500,000 has been spent since VJ Day, the number of awards made during that period being some 248,000. Sad to say, expenditure at this high rate, which is likely to be needed for a great many years to come, can only be continued if further public support is forthcoming—a fact which makes my appeal urgent.

Sir Winston Churchill has said: "The Royal Air Force Benevolent Fund is part of the conscience of the British nation. A nation without a conscience is a nation without a soul. A nation without a soul is a nation that cannot live."

We shall be most grateful for every donation—all will be acknowledged. Cheques, postal orders or stamps should be sent to me at 67 Portland Place, London, W.1. (Telephone: Langham 8343.)

KNOLLYS,

*Chairman of the Council, R.A.F. Benevolent Fund.*

London, W.1.

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### The Housing Repairs and Rents Act

Sir,—"R.B." writes at p. 583 of the current volume: "A carefully qualified right to increase a rent which includes payments for services is conferred by s. 40; the standard rent must be one fixed by a pre-2nd September, 1939, letting, *and the services must be provided under the agreement.*" Do the services in fact have to be provided under the agreement?

The position appears rather to be as follows: A landlord may recover the services increase if he is required by the terms of the contract of letting to provide services to the tenant, *and also if he does in fact provide such services without contractual obligation* (see s. 40 (1) (*b*)). On the other hand, the amount payable for furniture or services can be excluded from the rent in calculating the "repairs increase" stopper *only if these are provided under the terms of the contract* (see s. 24 (3) (*b*)).

Possibly this is an unintended anomaly.

PETER C. HELLMAN.

London, N.W.3.

# TALKING "SHOP"

## OLD CRUSTY RUMBOLD'S LETTERS TO HIS SON—V

My dear Richard,

I hope to have made it plain in my last letter that you must serve your clients but should not be subservient to them, and that it does not suffice to serve in the Miltonian sense that they also serve who only stand and wait. I also enjoined civility, but not at the expense of your critical faculties, and commended to you the importance of an independent judgment.

Now there is a wide gulf between precept and practice that I cannot hope to bridge even by means of a private letter, but it is not impossible to cross the narrower gap between the general and the particular. In your last letter, though you were too tactful to express yourself so, you made it clear enough that you were a little bemused by so many generalities of the "do this" but "don't do that" type and thought it might be an advantage if I cut loose from Chaucer and told you something of what really goes on in the office. Well, you must allow me my Chaucer, but I will do my best to supply you with your "further and better particulars."

Let me first adjure you to model yourself upon Brer Rabbit, or (if you prefer) upon that wise old owl of whom it was said (*inter alia*) that the less he spoke, the more he heard. Mr. E., who called this afternoon (twenty-five minutes late for his appointment), discoursed from 3.10 to 3.42 p.m., and during those thirty-two minutes I did not utter a syllable. Long enough, you might think, to "put me in the picture"—though the mechanics of putting people into pictures is something that I have never properly understood. But not a bit of it. During this time—more than six times as long as the B.B.C. allot to the Week's Good Cause—Mr. E., speaking in part extempore and in part from prepared notes, had contrived to communicate to me (1) that he had made some injudicious loans; (2) that he was somehow mixed up in a partnership business; and (3) that his brother-in-law was suffering from persecution mania. The amounts and dates of the loans; the name of the partner; the nature and situation of the business and its assets, liabilities, profits, losses and prospects; the terms of the partnership articles (if any) and his purpose in consulting me—none of these matters were so much as mentioned. But the eighteen minutes of the interview that remained—for my next client was due at four—served well enough to extract this further information and to supply the means of obtaining the necessary documents, leaving a little time to spare for some preliminary advice.

"Now why," you may ask, "let him run on like that? What a hideous waste of time!" But not at all. Had he not arrived so late, he should have had the best part of an hour for his oration. Do not fall into the vulgar error of supposing that it is always, or always in the main, for "advice" that clients come to you. Often "advice" is not the purpose but the pretext of the visit. Be like a parish priest or a psychiatrist if you have a mind to it, but if not, at least be a good listener.

Of course, there is a limit even to good listening and you are not obliged to sacrifice your time-table and the convenience of your other clients to the drivelling of insufferable bores. Experience may be gained in the gentle art of turning off taps and hydrants and diverting flows of eloquence. And when you have graduated in these minor watercourses, you may study under the great masters how to traverse cataracts on a tight-rope and shoot Niagara in a tar-barrel.

Let him then say his say, but in this as in all things exercise your discretion. You may stop him after two minutes or two hours according to circumstances. Very young, inexperienced, uneducated or nervous people—broadly, as it were, clients under disability—will come to you with little notion of what they want of you, or, given the notion, without the ability to express it. You may put them at their ease and simplify your own task by conducting a sort of kindly examination-in-chief. Others will come straight to the point, or what they suppose to be the point. Others again—and this is rather trying—will set off at a smart pace in what is, or appears to be, the wrong direction. With such, you must give yourself time to check your bearings and must suppress the natural urge to shout "Hi" or some other loud cry (though if strongly impressed you may on occasion remark "fritter my wig"). The point is that you may be mistaken in what the client is about, and apart from that it is unsettling for him to be pulled up abruptly and given an "about turn"; he may have taken more pains with his "brief" than you credit him with. But the timing, admittedly, is difficult. You must think quickly or you may find yourself in the dilemma of the subaltern whose platoon has outdistanced his range of command and is heading for the white cliffs of Dover. He can run after them, which is undignified, or he can pray that the leading file will mark time on the brink—and that without further eroding the coast-line.

Good listening is much valued by clients. On one occasion I was myself obliged to consult a solicitor on a private matter and it was a novel experience to be sitting in the client's chair. What impressed me was my solicitor's patience in hearing me out and the undivided attention that he gave me. It not only instilled confidence but inspired a feeling of gratitude.

If you are a good listener you will have plenty of time to study your client, and it may be more important that you should study him than that he should study you. But above all it stands for something that I hope may pervade your solicitor-client relationship—an absorbed interest that you feel or ought to feel (or at worst can purport to show) in your client's problems. I very much fear that sometimes you will have other things on your mind so that your interest may be temporarily feigned, but it is very much better to feign an interest than to display none at all, and if the interest is genuine that is better still.

Remember that your client will seldom ask himself whether your advice was sound, for of that he has no means of judging; but he will, as a rule, *ask himself whether you took his question to heart*. Once he has satisfied himself on this point you will find that it covers a multitude of your sins, even sometimes (though I do not recommend the experiment) to the point of your being forgiven bad and costly advice.

I must warn you against high-powered business types who will try to rush you into half-digested opinions or drafts and will blame you afterwards if things go wrong. Very seldom in my experience is such urgency justified. It is better not to advise at all than to give the wrong advice for want of thought.

Another client to beware of is the man who tells you no more than he thinks it is good for you to know. He is short with his information and will be short with you if you ask for more; but he will be shorter still if you do *not* ask and things go wrong. It is important not to be frightened of clients. In addition to what may be coaxed, there is often the vital piece of information that will slip out towards the end of the interview if you will only keep your client talking.

I had intended to say something about difficult, eccentric and impossible clients, but this is a subject for much study. I need only say here that in my view, just as a certain standard is rightly exacted of a professional man, so a certain (but perceptibly lower) standard ought to be demanded of clients, though all too often it is not. Where you are to set the standard is a matter for you to decide in your client's interests and your own. You had better not set it too high: just because a client is a little peculiar you are not justified in sending him across the street. On the other hand, people who act with gross impropriety towards their own solicitors should not be tolerated for a moment, and I count it as gross impropriety if a client repeatedly makes but fails to keep appointments, withholds reasonable information, persistently refuses to follow your advice or canvasses its merits with other lawyers, abuses you to your face or behind your back or writes you insulting letters. Much more difficult is the case of the man, or woman perhaps, who declines to follow your advice in some isolated matter and wishes to embark upon a course of action that you are convinced will prove wrong and costly. You must then do some heart-searching to discover whether it is in *your client's* best interests that you should continue to act against your better judgment. As a general rule it is not, and this is the proper reason to give if and when you decide to withdraw. I need hardly tell you that you are not obliged to act any more than your client is obliged to retain you.

Your affectionate father,

Crust Rumbold.

"Escrow."

# SURVEY OF THE WEEK

## STATUTORY INSTRUMENTS

**Agriculture** (Miscellaneous Provisions) Act, 1954 (Commencement) Order, 1954. (S.I. 1954 No. 1137 (C.10).)

Under this order, s. 4 of the Agriculture (Miscellaneous Provisions) Act, 1954, which provides for the appointment by the chairmen of Agricultural Land Tribunals of the other members of those tribunals, is to come into force on 29th September, 1954; and s. 6 of the Act, which provides for the reference by Agricultural Land Tribunals of questions of law to the High Court, came into force on 1st September, 1954.

Agriculture (Procedure of Agricultural Land Tribunals) Order, 1954. (S.I. 1954 No. 1138.) 8d.

This order consolidates with some amendments and additions the previous orders on this subject (S.I. 1948 Nos. 186 and 2751).

**Diversion of Highway** (Lancashire) (No. 1) Order, 1954. (S.I. 1954 No. 1114.)

**Exchange Control** (Payments) (Hungary) Order, 1954. (S.I. 1954 No. 1133.)

**Import Duties** (Drawback) (No. 5) Order, 1954. (S.I. 1954 No. 1109.) 5d.

**Lancashire River Board** (Fisheries) Order, 1954. (S.I. 1954 No. 1132.) 8d.
**London-Carlisle-Glasgow-Inverness Trunk Road** (West of Crianlarich and other Diversions) Order, 1954. (S.I. 1954 No. 1125.) 5d.
**London Traffic** (Prescribed Routes) (No. 17) Regulations, 1954. (S.I. 1954 No. 1124.)
**Lowestoft** Water Order, 1954. (S.I. 1954 No. 1110.) 5d.
**Private Legislation Procedure** (Scotland) General Order, 1954. (S.I. 1954 No. 1141 (S.108).) 5d.
**Retention** of Cable, Main and Pipe under Highways (Warwickshire) (No. 1) Order, 1954. (S.I. 1954 No. 1117.)
Retention of Mains and Cables under Highways (Inverness-shire) (No. 1) Order, 1954. (S.I. 1954 No. 1111.) 5d.
Retention of Railway across and over Highways (Monmouthshire) (No. 1) Order, 1954. (S.I. 1954 No. 1112.)
**Salford Hundred Court of Record** (Extension of Jurisdiction) Order, 1954. (S.I. 1954 No. 1140.)
**Stirling-Callandar-Crianlarich Trunk Road** (South of Crianlarich Diversion) Order, 1954. (S.I. 1954 No. 1126.)
**Stopping up of Highways** (Bedfordshire) (No. 1) Order, 1954. (S.I. 1954 No. 1129.)
Stopping up of Highways (Cumberland) (No. 1) Order, 1954. (S.I. 1954 No. 1116.)
Stopping up of Highways (Essex) (No. 4) Order, 1954. (S.I. 1954 No. 1130.)
Stopping up of Highways (Gloucestershire) (No. 5) Order, 1954. (S.I. 1954 No. 1115.)
Stopping up of Highways (Liverpool) (No. 1) Order, 1954. (S.I. 1954 No. 1128.)
Stopping up of Highways (London) (No. 36) Order, 1954. (S.I. 1954 No. 1131.)
Stopping up of Highways (Plymouth) (No. 6) Order, 1954. (S.I. 1954 No. 1113.)
Stopping up of Highways (West Riding of Yorkshire) (No. 5) Order, 1954. (S.I. 1954 No. 1127.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

# POINTS IN PRACTICE

**Company Law** — Liquidation — Agreement to Pay for Electricity in Ensuing Ten Years—Whether Guaranteed Sum Provable

*Q.* *A* agrees to supply *B*, a limited company, with electricity at certain premises in consideration of *B* agreeing to guarantee to consume or pay for a minimum amount, say £100, in each of the next ensuing ten years. At the end of the fifth year *B* goes into liquidation. Is *A* thereupon entitled to prove in the liquidation proceedings for £500, being the sum of £100 per annum guaranteed for the remaining five years? Can the liquidator successfully maintain that *A* must minimise his damages by entering into an agreement to supply other consumers with electricity at the premises during these five years and deduct the amount so received from *A's* claim of £500? In this event must the liquidation proceedings remain unclosed until the end of the ten-year period?

*A.* By s. 317 of the Companies Act, 1948, the law of bankruptcy is applied in the winding up of an insolvent company with regard to debts provable and the valuation of future and contingent liability. We have not seen the guarantee clause in the agreement between *A* and *B*, but *prima facie* it would seem not to "bear a certain value," since *A* would only expect to receive from it £100 per annum less the cost of supplying such current as *B* in fact consumed. (Even if, as a technical fact, it costs no more to supply $x$ units than $x-100$ units, the costs of generation, etc., ought we think to be apportioned so as to work a set-off against the minimum of £100.) All this means, in our opinion, that s. 30 (4) to (7) of the Bankruptcy Act, 1914, applies, and that an estimate must be made of the value of *B's* guarantee. We also think that *A* ought to minimise the damage in the way suggested, but that such minimisation should be brought into the estimate now. There is no authority for waiting until the expiry of the ten years.

**Landlord and Tenant** — Repairs — Local Authority Refusing Permission for Sole Permitted User

*Q.* Under the provisions of a lease of business premises for thirteen years, of which ten years have still to run, the tenant is responsible for internal repairs, there being no provision in the lease as to external repairs. The sole permitted user in the lease is that of a "trade or business of a silver plater, electro-plater and plating, spraying, bondarising and metal colouring work in all materials." The tenant has been refused permission by the local authority to use the premises for these purposes owing to the physical condition of the building, which is unsound and therefore unsuitable to house machinery. Although there is generally no necessity for the landlord to render premises available for the purposes for which they are known to be taken, nor indeed an implied contract that premises should be fit for the purposes for which they are let, since in this case the only permitted user is barred by the local authority, can the tenant either compel the landlord to put the premises in such a state of repair as to satisfy the local authority, or alternatively can he abandon the premises without incurring any liability under the lease?

*A.* We agree that the common law gives the tenant no remedy for such unfitness for purpose (*Sutton* v. *Temple* (1843), 12 M. & W. 52; *Manchester Bonded Warehouse Co.* v. *Carr* (1880), 5 C.P.D. 507, the latter being very much in point). If the tenant in the case submitted has any remedy, it must, in our opinion, be sought in the enactment under which the local authority have "refused permission" and in the terms of the refusal. It is conceivable that the Factories Act, 1937, s. 146, might enable the tenant to obtain an order setting aside or modifying the terms of the lease; or, what is more likely, that s. 147 of that statute would enable him to obtain an order which would impose responsibility for a large share of the cost of repairs and alterations on the landlord.

**Bookmaker's Agent**—Recovery of Fees, Commission and Expenses

*Q.* Jones is engaged by a bookmaker to introduce clients. Jones is a man with good connections and, in fact, introduces a number of persons who become clients of the bookmaker. Jones wishes to sue the bookmaker for money which the bookmaker promised him for the introduction of new clients, including commission in respect of each account introduced and a refund of all expenses reasonably incurred. Has Jones a right of action against the bookmaker, or do the Gaming Acts prevent such action?

*A.* We think that Jones has a right of action for commission earned and expenses incurred in connection with services rendered to the bookmaker under a contract in no way affected by the Gaming Acts. The position would be different if Jones were employed as a betting agent actually to place or receive bets (Act of 1892). But the Acts do not make a bookmaker's business illegal; they merely avoid betting contracts. The bookmaker can be sued by his stationer, his printer, his typist, etc., in the ordinary way for their accounts or wages. We think there might be an arguable point if Jones' commission were to depend on money lost by the new clients to the bookmaker. But if it is a fixed commission we think it recoverable; and we think that the expenses certainly are, unless by the terms of the agreement Jones was to bear them himself out of the commission.

**Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 102-103 Fetter Lane, London, E.C.4.**

**They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.**

# NOTES AND NEWS

### Honours and Appointments

The Board of Trade announce that Mr. WALTER HAROLD HAIGH has been appointed an Official Receiver for the Bankruptcy District of the County Courts of Ashton-under-Lyne, Bolton, Oldham, Rochdale and Stockport; and for the Bankruptcy District of the County Courts of Preston, Blackpool, Blackburn and Burnley, with effect from 30th August.

Admiral Sir WILLIAM TENNANT, K.C.B., C.B.E., M.V.O., and Mr. A. H. ENSOR have been appointed directors of the Legal & General Assurance Society, with effect from 1st September.

### Personal Note

Mr. Duncan Sutcliffe Brown, solicitor, of Bradford, was married on 2nd September to Miss Mary Hird, of Menston-in-Wharfedale.

### Miscellaneous

#### SERVICE AT WESTMINSTER ABBEY.

FRIDAY, 1ST OCTOBER, 1954

On the occasion of the re-opening of the Law Courts, a special service will be held in Westminster Abbey on Friday, 1st October, 1954, at 11.45 a.m., which the Lord Chancellor and Her Majesty's Judges will attend.

Members of the Junior Bar and Bar students wishing to attend the service must notify the Secretary of the General Council of the Bar not later than Monday, 27th September.

Barristers attending the service must wear robes. Students must wear students' gowns. All should be at the Langham Room of the Deanery, via Dean's Yard (instead of Jerusalem Chamber), where robing accommodation will be provided, not later than 11.30 a.m.

A limited number of seats will be available for relations and friends of members of the Bar and admission to these seats will be by ticket only. Applications for these tickets should be made—

(*a*) by Queen's Counsel direct to Mr. John Hunt, Crown Office, House of Lords, S.W.1;

(*b*) by members of the Junior Bar to the Secretary of the General Council of the Bar, 2 Stone Buildings, Lincoln's Inn, W.C.2.

Ticket holders must be in their seats by 11.35 a.m.

#### COUNTY OF DURHAM DEVELOPMENT PLAN

On 19th February, 1954, the Minister of Housing and Local Government approved (with modifications) the above development plan. Certified copies of the plan as approved by the Minister, which includes town maps for (1) Hartlepool Municipal Borough, (2) Houghton-le-Spring and District, and (3) Billingham, have been deposited at the County Planning Office, 10 Church Street, Durham, and also at the offices of (1) the Municipal Borough Council, Hartlepool, (2) the Houghton-le-Spring U.D.C. and the Chester-le-Street R.D.C., and (3) the Billingham U.D.C., respectively. Certified copies of the plan (excluding the above-mentioned town maps) have been deposited at the offices of the Municipal Borough Councils of Durham, Stockton-on-Tees and Jarrow, and also at the Council Offices of each Urban and Rural District Council in the Administrative County not mentioned above. The copies of the plan so deposited will be open for inspection free of charge by all persons interested during normal office hours. The plan became operative as from 3rd September, 1954, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 3rd September, 1954, make application to the High Court.

#### THE SOLICITORS ACTS, 1932 TO 1941

IVOR MILES EVANS, of Livingstone, Northern Rhodesia, solicitor, having, in accordance with the provisions of the Solicitors Acts, 1932 to 1941, made application to the Disciplinary Committee constituted under the Act that his name might be removed from the Roll of Solicitors at his own instance on the ground that he desires in due course to be called to the Bar, an order was, on 26th August, 1954, made by the Committee that the application of the said Ivor Miles Evans be acceded to and that his name be removed accordingly from the Roll of Solicitors of the Supreme Court.

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On 26th August, 1954, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon ERNEST FRANK CHURCHILL of Nos. 6 and 8 Cross Street, Reading, a penalty of fifty pounds (£50) to be forfeit to Her Majesty, and that he do pay to the complainant one-quarter of his costs of and incidental to the application and enquiry.

On 26th August, 1954, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of LESLIE JAMES POCOCK, of Holloway Sanatorium, Virginia Water, Surrey, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and enquiry.

On 26th August, 1954, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of ALEXANDER MCKENZIE, of Nos. 6 and 8 Cross Street, Reading, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant three-quarters of his costs of and incidental to the application and enquiry.

On 26th August, 1954, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of JOHN LESLIE PHELPS, of Southend Lodge, Moorend Grove, Cheltenham, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and enquiry.

On 26th August, 1954, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of ARTHUR CECIL POTTER, of No. 60 Paines Lane, Pinner, Middlesex, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and enquiry.

On 26th August, 1954, on a rehearing an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that a previous Order dated the 25th February, 1954, that the name of ARTHUR MASON AMERY, of Nos. 12–14 Rodney Road, Cheltenham, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and enquiry be not disturbed, and it was further ordered that in addition he do pay to the applicant the applicant's costs of and incidental to the rehearing.

On 26th August, 1954, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that ARTHUR HENRY DABBS, of No. 12 Watery Lane, Merton Park, Wimbledon, S.W.19, be suspended from practice as a solicitor for a period of two (2) years from the date of the Order and that he do pay to the applicant his costs of and incidental to the application and enquiry.

On 26th August, 1954, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon ALFRED JOHN HARRIS, of No. 61 Gloucester Road, Kingston-on-Thames, a penalty of fifty pounds (£50), to be forfeit to Her Majesty, and that he do pay to the complainant his costs of and incidental to the application and enquiry.

On 26th August, 1954, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon ARTHUR HENRY DABBS and REGINALD HERBERT DABBS, of No. 12 Watery Lane, and No. 10 Delamere Road, S.W.20, jointly and severally a penalty of fifty pounds (£50), to be forfeit to Her Majesty, and that they jointly and severally do pay to the complainant his costs of and incidental to the application and enquiry.

## NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

### SURVEY OF PUBLIC RIGHTS OF WAY

The following notices of the preparation of draft maps and statements under s. 27 of the above Act, or of modifications to draft maps and statements already prepared, have appeared since the tables given in vol. 97 and at pp. 48, 116, 238, 360 and 527, *ante* :—

| Surveying Authority | Districts covered by draft map and statement | Date of notice | Last date for receipt of representations or objections |
|---|---|---|---|
| Berkshire County Council | East Berkshire: modifications to draft map and statement of 13th December, 1952 | 20th August, 1954 | 17th September, 1954 |
| | Newbury Borough; Bradfield, Hungerford and Newbury Rural Districts | 1st September, 1954 | 7th January, 1955 |
| Cumberland County Council | Whitehaven Borough; Ennerdale and Millom Rural Districts: modifications to draft map and statement of 1st April, 1953 | 28th July, 1954 | 29th September, 1954 |
| East Suffolk County Council | Blyth and Samford Rural Districts: modifications and further modifications to draft maps and statements of 22nd April and 1st January, 1953, respectively | 28th August, 1954 | 5th October, 1954 |
| Isle of Wight County Council | County of the Isle of Wight: modifications to draft map and statement of 4th December, 1952 | 26th August, 1954 | 8th October, 1954 |
| Rochdale County Borough Council | County Borough of Rochdale | 24th August, 1954 | 30th January, 1955 |
| Rutland County Council | Oakham Urban District; Ketton, Oakham and Uppingham Rural Districts: modifications to draft map and statement of 9th December, 1952 | 23rd July, 1954 | 30th August, 1954 |
| Somerset County Council | Minehead and Watchet Urban Districts; Williton Rural Districts | 25th August, 1954 | 31st March, 1955 |
| Staffordshire County Council | Newcastle-under-Lyme and Stafford Boroughs; Cannock, Kidsgrove and Stone Urban Districts | 27th July, 1954 | 11th December, 1954 |
| | Cannock, Newcastle-under-Lyme, Stafford and Stone Rural Districts | 27th July, 1954 | 8th January, 1955 |

In addition Southampton County Council have announced the preparation of (1) *provisional* maps and statements covering Alton Urban and Rural District, in respect of which applications to quarter sessions under s. 31 of the 1949 Act would now be out of time; (2) *definitive* maps and statements covering Gosport Borough, Fareham Urban District and Droxford Rural District, in respect of which applications to the High Court under Pt. III of Sched. I to the 1949 Act would now be out of time.

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### Wills and Bequests

Mr. F. Evershed, solicitor, of Burton-on-Trent, left £28,954 (£28,606 net).

Mr. E. P. Smyth, solicitor, of Melton Mowbray, left £24,569 (£24,435 net).

# OBITUARY

### Mr. E. BARLOW

Mr. Ernest Barlow, solicitor, of Stockport, Dukinfield, Manchester and Macclesfield, died on 4th September, aged 66. He was Chairman of Stockport County Football Club for thirty-two years. He was admitted in 1912.

### Mr. J. A. EWING

Mr. James Archibald Ewing, solicitor, of Southampton, died recently, aged 77. He was one of the founders of the Southampton and District Canine Association and was its president for many years. He was also until recently hon. solicitor to Our Dumb Friends League, Southampton. He was admitted in 1900.

## CASES REPORTED IN VOL. 98

3rd July to 28th August, 1954

For list of cases reported up to and including 26th June, see Interim Index




"THE SOLICITORS' JOURNAL"

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*Contributions* are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).

# ★ Classified Advertisements ★

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Advertisements should be received by first post Wednesday for inclusion in the issue of the same week and should be addressed to

**THE ADVERTISEMENT MANAGER, 102/3 FETTER LANE, E.C.4. CHAncery 6855**

*The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18–64, inclusive, or a woman aged 18–59, inclusive, unless he or she, or the employment, is excepted from the provisions of the Notifications of Vacancies Order, 1952*

## PUBLIC NOTICES

### COUNTY BOROUGH OF GRIMSBY

SENIOR LEGAL ASSISTANT

Applications are invited for the appointment of SENIOR LEGAL ASSISTANT in the Town Clerk's Department, at a salary in accordance with Grade A.P.T. IV of the National Joint Council (£580 per annum rising by annual increments of £15 to £625 per annum).

Previous municipal experience is not essential, but applicants should have a sound general knowledge of the work of a solicitor's office.

Letters of application stating name, address, age and giving details of qualification, experience, etc., should be forwarded to reach the undersigned not later than the 30th September, 1954.

L. W. HEELER,
Town Clerk.

Municipal Offices,
Town Hall Square,
Grimsby.

### CITY OF BRADFORD

ASSISTANT SOLICITORS

Applications are invited for the appointment of (1) a SENIOR ASSISTANT PROSECUTING SOLICITOR at a salary in accordance with Scale B (£1,025–£1,150), and (2) an ASSISTANT PROSECUTING SOLICITOR at a salary in accordance with Grades A.P.T. VA to VII according to experience. The posts are superannuable.

The solicitors appointed may be required to assist generally in the work of the office, but will be engaged almost exclusively with prosecutions.

Applications endorsed "Assistant Solicitor (1)" and "Assistant Solicitor (2)," respectively, giving the names of two referees should reach the undersigned not later than 28th September, 1954.

W. H. LEATHEM,
Town Clerk.

Town Hall,
Bradford.

### CITY OF BIRMINGHAM

PROSECUTING SOLICITOR'S DEPARTMENT

Applications invited for the appointment of an Assistant Solicitor. Salary Grade X (£920–£1,050). Post pensionable. Medical examination.

Candidates must possess a sound knowledge of criminal law and have had experience of advocacy. Local government experience not essential. The duties will comprise chiefly prosecutions for the police and such other cases for the Corporation as may be required.

Applications, endorsed "Assistant Prosecuting Solicitor," with full particulars of experience (including the Courts in which the applicant has practised) and names of three referees, to undersigned by 29th September, 1954.

Canvassing disqualifies.

J. F. GREGG,
Town Clerk.

Council House,
Birmingham, 1.
September, 1954.

### URBAN DISTRICT COUNCIL OF COULSDON AND PURLEY

APPOINTMENT OF SENIOR LEGAL CLERK

Applications are invited for the appointment of a SENIOR LEGAL CLERK in the Department of the Clerk of the Council. The person appointed will be engaged on the general legal work of the Council, should have a thorough knowledge and experience of Common Law, and should also be able to undertake conveyancing matters. Previous Local Government experience will be an advantage.

The appointment is subject to the provisions of the Local Government Superannuation Acts, the National Scheme of Conditions of Service and to the passing of a medical examination.

Salary within A.P.T., Grades V (*a*)/VI (£650–£760) according to experience, plus London Weighting, the appointment to be determined by one month's written notice on either side.

Forms of Application may be obtained from me, and should be returned, accompanied by copies of two recent testimonials, so as to be received not later than 16th September, 1954.

Canvassing in any form will disqualify.

ERIC F. J. FELIX,
Clerk of the Council.

Council Offices,
Purley, Surrey.
August, 1954.

## APPOINTMENTS VACANT

SENIOR Conveyancer required by large and expanding City firm; wide and up-to-date experience essential; emoluments (including pension scheme and lunch tickets) up to £1,250 according to qualifications for energetic and capable man under 50.—Apply Box 2307, Solicitors' Journal, 102/3 Fetter Lane, E.C.4.

WIGAN.—Assistant Solicitor or experienced unadmitted Managing Clerk required; must have experience of conveyancing and probate and be capable of acting without or with little supervision. Salary in accordance with experience.—Box 2308, Solicitors' Journal, 102/3 Fetter Lane, E.C.4.

SOLICITOR or Barrister required by large industrial corporation for a superannuable post in their legal department in London. Applicants must be young men keenly interested in commercial work and litigation, and with the ability and determination to undertake positions of substantial responsibility in due course. The post would suit a recently qualified man with sound training but limited experience. The initial salary will be between £700 and £800 per annum, and a satisfactory applicant can expect advancement when he has proved his worth.—Write, giving full particulars of age, education, qualifications and previous experience (with dates) and National Service, to Box 2309, Solicitors' Journal, 102/3 Fetter Lane, E.C.4. Original testimonials should NOT be enclosed. Closing date 23rd September, 1954.

UNADMITTED Conveyancing and Probate Managing Clerk (35–40 preferred) required by Mid-Herts Solicitor. Easy reach King's Cross by train or most parts of N. London by coach. Salary by arrangement.—Box 2315, Solicitors' Journal, 102/3 Fetter Lane, E.C.4.

SHORTHAND-TYPIST required by City solicitors; write, stating age, experience and salary required.—Box 2251, Solicitors' Journal, 102/3 Fetter Lane, E.C.4.

CONVEYANCING Clerk required by West Surrey Solicitors. Capable of working without supervision. Good salary to suitable man. State age and experience to Box 2314, Solicitors' Journal, 102/3 Fetter Lane, E.C.4.

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# ★ Classified Advertisements ★

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## APPOINTMENTS WANTED—*continued*

SOLICITOR (33), admitted 1951, general experience including conveyancing, probate and advocacy, seeks congenial position with prospects. London or overseas.—Box 2316, Solicitors' Journal, 102/3 Fetter Lane, E.C.4.

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